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THOMAS A. DJIBIASE

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

5 Righthaven LLC, a Nevada limited-liability company.

CASE NO.: 2:10-cv-01343-RLH-PAL

Plaintiff,
v

**DECLARATION OF BART E.
VOLKMER IN SUPPORT OF
DEFENDANT/COUNTERCLAIMANT
THOMAS A. DIBIASE'S MOTION TO
COMPEL THE PRODUCTION OF
DOCUMENTS FROM
PLAINTIFF/COUNTER-DEFENDANT
RIGHHAVEN LLC**

THOMAS A. DIBIASE, an individual,

Defendant

21 THOMAS A. DJIBIASE, an individual.

Counterclaimant.

V.

RIGHTHAVEN LLC, a Nevada limited-liability company

Counter-defendant

1 I, Bart E. Volkmer, declare as follows:

2 1. I am counsel for Defendant-counterclaimant Thomas A. DiBiase (“DiBiase”). I
3 submit this declaration in support of his motion to compel the production of documents. I have
4 personal knowledge of the facts set forth herein and, if called as a witness, I could and would
5 testify competently to them.

6 2. On January 20, 2011, DiBiase served on Righthaven a First Set of Requests for
7 Production to Righthaven LLC. A true and correct copy of those requests is attached hereto as
8 **Exhibit A.**

9 3. February 25, 2011, Righthaven served its response to DiBiase’s First Set of
10 Requests for Production. A true and correct copy of that response is attached hereto as **Exhibit**
11 **B.**

12 4. On March 2, 2011, I wrote a letter to Righthaven’s counsel setting forth the
13 deficiencies in Righthaven’s response to DiBiase’s First Set of Requests for Production to
14 Righthaven LLC. A true and correct copy of that letter is attached hereto as **Exhibit C.**

15 5. The parties met and conferred concerning Righthaven’s response to DiBiase’s
16 First Set of Requests for Production on March 9, 11, 16 and 17. During those sessions,
17 DiBiase’s counsel explained the relevance of his document requests and attempted to persuade
18 Righthaven’s counsel to withdraw Righthaven’s lodged objections. Righthaven’s counsel agreed
19 to produce documents in response to certain requests, but continued to stand on objections, or
20 only agreed to a very limited production set, with respect to Request Nos. 30-34, 39, 45-47, 51,
21 53-56, 58, 63-74, 85-88, 91-94, 97-102, and 104-105. I sent Righthaven’s counsel a letter on
22 March 25, 2011 that memorialized the parties’ meet and confer sessions. A true and correct copy
23 of that letter is attached hereto as **Exhibit D.**

24 6. To my knowledge, Righthaven has not produced any documents in response to
25 DiBiase’s requests, including the most basic evidence in this case, such as the alleged assignment
26 of the copyright in the McMurdo Article from Stephens to Righthaven, communications from
27 Righthaven to the Copyright Office, and the copyright registration itself. The few documents
28 that Righthaven has produced were provided pursuant to Supplemental Initial Disclosures on

1 April 8, 2011, May 12, 2011, and May 17, 2011, not in response to DiBiase's production
2 requests. Those documents are: (1) an unexecuted version of Righthaven LLC's operating
3 agreement; (2) a Strategic Alliance Agreement ("SAA") between Righthaven and Stephens
4 Media; (3) Righthaven's Articles of Organization; (4) a May 9, 2011 amendment to the SAA;
5 (5) a letter from Righthaven to Stephens; (6) a copy of the print version of the newspaper article
6 at issue in this case; (7) ten pages of research concerning Mr. DiBiase; and (8) an excecuted
7 version of Righthaven's operating agreement.

8 7. Attached hereto as **Exhibits E and F** are true and correct copies of online
9 magazine articles entitled "Second Newspaper Chain Joins Copyright Trolling Operation" and
10 "Righthaven Expands Troll Operations With Newspaper Giant" stating that WEHCO Media and
11 MediaNews Group have signed on as Righthaven clients.

12 8. A true and correct copy of the Strategic Alliance Agreement between Righthaven
13 and Stephens Media LLC is attached hereto as **Exhibit G**. While marked "Confidential,"
14 counsel for Righthaven agreed to remove that confidentiality designation on May 2, 2011 in light
15 of this Court's April 14, 2011 Order in *Righthaven v. Democratic Underground*, Case No. 2:10-
16 cv-01356-RLH-GWF, Docket No. 93.

17 9. On April 29, 2011, I sent an email message to Righthaven's counsel inquiring
18 about the status of Righthaven's document production and requesting that Righthaven produce a
19 privilege log. Counsel for Righthaven never responded to my message. A true and correct copy
20 of my April 29, 2011 email message is attached hereto as **Exhibit H**.

21 10. On May 4, 2011, I sent a follow-up email inquiring about Righthaven's document
22 production. Counsel for Righthaven never responded to my message. A true and correct copy of
23 my May 4, 2011 email message is attached hereto as **Exhibit I**.

24 11. Attached hereto as **Exhibit J** is a true and correct copy of Righthaven's Operating
25 Agreement that was produced by Righthaven as a supplemental initial disclosure on April 8,
26 2011. Certain financial information has been redacted from this agreement pursuant to an
27 agreement of the parties.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct. Executed this 18th day of May 2011, at Palo Alto, California.

3 /s/ Bart E. Volkmer
4 Bart E. Volkmer

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